C.S-151

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Single Bench

CIVIL REVISION NO. 143 /2004

APPLICANTS :

1. Nanhiram, S/o Naitram, aged about 58 years, Occupation-Agriculture,
2. Maheshram, S/o Raruha, aged about 61 years,
3. Ganeshram, S/o Raruha, aged about 63 years, Occupation-Agriculture,
4. (a) Padum, S/o Keshav, aged 50 years, Occupation-Agriculture,
   (b) Punilal, S/o Keshav, aged 45 years, Occupation-Agriculture
5. Mausamibai, Widow of Madhav, aged about 51 years, Occupation-Agriculture,
6. Revalal, S/o Madhav, aged about 31 years, Occupation-Agriculture,
7. Phuleshwar, S/o Madhav, aged about 32 years,
8. Nehru, S/o Madhav, aged about 24 years,

All the above are R/o Village-Botalda, Tahsil Kharsia, District Raigarh (C.G.)

P.R. No. 13-6-04
Presented by Shri Ramesh Singh
dated 17-8-04

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17/8/04
Clerk to A.G. Bilaspur

-VERSUS-

NON-APPLICANTS

1. Tularam, S/o Netram, aged about 60 years, Occupation-Agriculture, R/o Village-Botalda, Post & Tahsil-Kharsia, District Raigarh (C.G.)
2. State of Chhattisgarh through Collector, Raigarh (C.G.)

CIVIL REVISION U/S 115 OF CODE OF CIVIL PROCEDURE

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. 143/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

9.2.2005:

Shri Rajiv Shrivastava learned counsel for the applicants.
Ku. Deepali Pandey learned counsel for the respondent No.1.

The instant revision petition has been filed by the applicants under section 115 of the Code of Civil Procedure against the order dated 24.7.2004 passed by IV Civil Judge Class-II Raigarh in Civil suit No. 101-A/2003, by which the preliminary issue No.3 regarding the maintainability of the suit in the light of the bar under section 257 of the Chhattisgarh Land Revenue Code (hereinafter referred to as "Code" for convenience), has been decided against the applicants and the suit has been held to be maintainable.

Learned counsel for the applicants relying on the judgment in the matter of **Nathu Vs. Dilbande Hussain and others reported in 1964 MPLJ Page 822,** contends that the respondent No.1 had made an application for restoration of possession under section 250 of the Code before the Tehsildar, which was rejected on the ground that the same was time barred and as such after availing the remedy, though unsuccessfully, under the provisions of the Code, the suit of the respondent No.1 was barred according to the provisions of section 257 (X) of the Code. It is further submitted that the suit is not for title but it is simply for recovery of possession and therefore, the respondent had the remedy of filing an application under section 250 of the Code which he availed though unsuccessfully and as such the suit was not maintainable.

Gr. PRJ—FS/350—12/2000—50,000.

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. 143/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the other hand learned counsel for the respondent No.1 submits that the instant suit is based on title as the plaintiff has claimed that in the family partition the suit land was allotted to his share and when he discovered the fact that suit land was allotted to his share, he moved an application under section 250 of the Code and the same was dismissed and as such the suit was held to be maintainable as it is based on title for recovery of possession. In support of her contention she relies on the judgment in the matter of **Rohini Prasad** and **others Vs. Kashtoor Chand and another reported in 2000 RN, 141.**

I have heard learned counsel for the parties and gone through the impugned order. In the judgment cited by the applicants in the matter of Nathu Vs. Dilbande Hussain and others (supra), it has been held that the provisions contained under section 257 of the Code are attracted in the suit instituted under section 9 of the Specific Relief Act for restoring the possession of the land to a dispossessed Bhumuswami and the aggrieved Bhumiswami is not bound to resort to the remedies provided under section 250 of the Code. It is the discretion of the aggrieved party if he likes to straightaway bring a suit for the establishment of his title to the land and to recover possession thereof and it is open for the Bhumiswami to recover the possession in any manner of his choice.

In the present case also the suit has been filed by the respondent No.1 /plaintiff to recover the possession of the land which has been allotted to his share in the family partition and therefore, according to my opinion the suit of the like nature as instituted by the plaintiff before the trial Court was rightly held maintainable. Findings recorded by the trial Court also find support from

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Gr. PRJ—FS/350—12/2000—50,000.

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. 143/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	the judgment of the Apex Court in the matter of Rohini Prasad (supra) wherein it has been held that the civil suit by the Bhumiswami based on title for restoration of possession is not barred under section 257 of the Code. Thus after hearing counsel for the parties and going through the material available on record, I am of the opinion that the revision petition preferred by the applicant/defendant has no merit and the same is liable to be dismissed. Accordingly it is dismissed. Sd/- DHIRENDRA MISHRA Judge JYOTISHI	

GE.PRJ—FS/350—12/2000—50,000.

15.2.05